

Claimant argues she is entitled to additional temporary total disability (TTD) and that respondent should be ordered to pay K.S.A. 44-512b interest/penalties for permanent partial disability (PPD) due and unpaid as of March 5, 2013.

The issues for Board review are:

1. Did claimant sustain personal injury by accident arising out of and in the course of her employment?
2. What is claimant's average weekly wage?
3. Is claimant entitled to additional TTD benefits?
4. What is the nature and extent of claimant's disability?
5. Is claimant entitled to interest on the amount of disability compensation due and unpaid as of March 5, 2013, pursuant to K.S.A. 2010 Supp. 44-512b.

FINDINGS OF FACT

Having reviewed the evidentiary record, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings:

Claimant was hired by respondent, a nurse staffing company, as a certified nurse assistant (CNA) in December 2010. When injured, claimant was working at Long-Term Acute Care (LTAC) in Wichita. Claimant's job required caring for patients, including taking vital signs, changing beds, checking blood sugar levels, emptying urinals and helping with toileting and bathing. The most physically demanding duties involved turning patients in bed and lifting them to standing or seated positions.

Claimant testified her job was a full-time position and on the night of her injury, she earned \$13.75 per hour. She testified she worked overtime, received bonuses and shift differential when working nights.

At about 10 p.m. on April 15, 2011, claimant sustained an injury she described as follows:

A. I was working, another nurse and I went to clean up a patient who had soiled herself in bed. She was -- she was a really large woman that had been there for a gangrenous wound, she was handicapped and had -- she had yeast in her folds and was on her period and had urinated and had feces on her sheets. So the nurse and myself were going to clean her up. And I grabbed the turning sheet. I was going to push -- turn her away from me to be on the business side of things. And the patient's head was to my right and her feet to my left. And when I pulled up her

sheet we unleashed the most ungodly smell. And so I changed my body mechanics so that way I didn't taste it. And when I did, I turned my head away and my whole arm went numb.¹

Claimant told a co-worker that her arm "went to sleep," a symptom claimant says lasted the rest of her shift. Claimant completed an accident report and was instructed by respondent's director of nursing to seek medical treatment at the Wichita Clinic. Claimant was initially seen at the Clinic by a resident physician and thereafter by Dr. Mark Dobyns.

Dr. Dobyns prescribed physical therapy and ordered diagnostic testing, consisting of an EMG/nerve conduction study and a cervical MRI scan. The May 20, 2011, EMG/NCT revealed mild chronic C7 radiculopathy with no evidence of median nerve compression. The June 1, 2011, cervical MRI revealed moderate spinal stenosis at C5-7 and a large paratracheal mass possibly originating in claimant's thyroid gland. On July 1, 2011, Dr. Dobyns took claimant off work and referred her to Dr. Matthew Henry, a neurosurgeon.

Dr. Henry recommended surgery, which claimant chose not to undergo. Dr. Henry then prescribed steroid injections. Claimant received two cervical epidural steroid injections. Additional physical therapy and medication were prescribed by Dr. Henry, who released claimant from his care on January 24, 2012.

Dr. David Harris, board certified in physical medicine and rehabilitation, commenced authorized treatment on November 14, 2011. The doctor reviewed claimant's medical records, took a history and performed a physical examination. Claimant complained of neck pain and left arm radicular symptoms. Dr. Harris noted claimant had tenderness to palpation on the left side of her neck and trapezius region and mildly decreased sensation over the left biceps, triceps and forearm laterally. Dr. Harris read the June 1, 2011 MRI to show mild to moderate diffusely bulging discs at C5-7, mild to moderate canal stenosis and mild bilateral foraminal stenosis. Dr. Harris diagnosed cervical pain and left upper extremity radiculopathy, primarily in the C6-7 dermatome.

Prior to the regular hearing, claimant was diagnosed with papillary carcinoma. She has undergone multiple surgeries to remove her thyroid gland and lymph nodes in her throat. Claimant is not working due to her carcinoma.

Dr. Harris provided conservative treatment, consisting of light-duty restrictions, physical therapy, a TENS Unit, medication and trigger point injections, until he found claimant reached MMI on June 18, 2012. Dr. Harris testified claimant's treatment for her work injury was interrupted by her throat cancer diagnosis. Dr. Harris opined the cancer did not increase claimant's work-related symptoms.

¹ R.H. Trans. at 14-15.

Dr. Pedro Murati, board certified in electrodiagnostic medicine, physical medicine and rehabilitation, evaluated claimant on June 18, 2012, at the request of her attorney. The doctor reviewed claimant's medical records, took a history and performed a physical examination. Dr. Murati diagnosed neck pain with signs and symptoms of radiculopathy and left carpal tunnel syndrome secondary to double crush syndrome. Dr. Murati opined claimant's diagnoses were a direct result of claimant's work-related injury on April 15, 2011. Based upon an 8-hour work day, Dr. Murati imposed the following restrictions: (1) no lifting, carrying, pushing or pulling greater than 20 pounds; (2) no climbing ladders; (3) no squatting; no heavy grasping greater than 40 kilograms; (4) no working more than 18 inches from the body; (5) avoid awkward positions of the neck; and (6) avoid the use of hooks, knives or vibratory tools.

Based upon the AMA *Guides*², Dr. Murati placed claimant in Cervicothoracic DRE Category III for a 15% whole person impairment due to neck pain with radiculopathy. For carpal tunnel syndrome, Dr. Murati opined claimant has a 6% whole person impairment. The whole body impairments combine to a 20% functional impairment to the whole body.

Dr. Murati reviewed the list of claimant's former work tasks prepared by vocational consultant Karen Terrill and concluded claimant could no longer perform 59 of the 79 tasks for a 75% task loss.

Dr. Murati disagreed with the EMG report. Dr. Murati opined claimant had a significant difference between the ulnar nerve distal latency and the median nerve distal latency which proved median nerve entrapment at the left wrist.

Claimant was referred by her attorney to Ms. Terrill to identify the tasks claimant performed in the 15 years before her injury and to determine her loss of wages. A personal interview was conducted with claimant on September 13, 2012, and a follow-up interview via telephone on November 9, 2012. Ms. Terrill prepared a list of 79 previous work tasks. At the time of interviews, claimant was not working and therefore had a 100% wage loss.

Dr. Chris Fevurly, board certified in internal and preventive medicine, evaluated claimant on April 23, 2013, at the request of respondent's attorney. The doctor reviewed claimant's medical records, took a history and performed a physical examination. Dr. Fevurly found claimant had diminished range of motion in her cervical spine; a positive right Spurling's test; left paraspinal tenderness at the cervicothoracic junction; weakness in the left biceps and triceps; sensory loss to pinprick and soft touch in the left C7 nerve root distribution; diminished left triceps jerk; and, mild loss in pinprick sensation in the first three fingers of the left hand.

² American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Dr. Fevurly diagnosed the following: (1) degenerative disc disease; (2) neural foraminal stenosis from a disk osteophyte complex; (3) cervical spine stenosis; and, (4) EMG findings of chronic left C7 radiculopathy. Based upon the *AMA Guides*, Dr. Fevurly placed claimant in DRE Cervicothoracic Category III which results in a 15% whole body impairment. Dr. Fevurly opined that “this impairment has no probable casual relationship to her work or specifically to the work event on 4/15/11.”³

Dr. Fevurly imposed permanent restrictions of no lifting greater than 20 pounds frequently and 40 pounds occasionally; no pushing and pulling greater than 50 pounds; and no prolonged overhead lifting and awkward positioning of the neck.

Dr. Fevurly reviewed the list of claimant’s former work tasks prepared by Ms. Terrill and concluded claimant could no longer perform 31 of the 79 tasks for a 39% task loss.

Claimant continued to work for respondent, in both accommodated and regular duty capacities, until her employment was terminated by respondent on December 7, 2011. The reason for claimant’s termination was violating company policy regarding “chitchatting” and office gossip. Claimant has not worked since her termination.

At the time of the regular hearing, claimant experienced constant pain and numbness from the back of her left arm across to the left forearm and into the thumb and first two fingers of her left hand.

PRINCIPLES OF LAW AND ANALYSIS

The Board has carefully considered the issues raised by the parties and finds no error in the SALJ’s Award. The Board adopts the findings, as supplemented above, and conclusions set forth in the Award. Such findings and conclusions are consistent with the Kansas Workers Compensation Act, are supported by the preponderance of the credible evidence, and are incorporated into this Order as though fully set forth.

CONCLUSIONS OF LAW

1. Claimant sustained personal injury by accident arising out of and in the course of her employment on April 15, 2011.
2. Claimant’s average weekly was \$558.23.
3. Claimant is not entitled to additional TTD benefits.

³ Fevurly Depo., Ex. 2 at 8.

4. As a result of claimant's accidental injury, she sustained a functional impairment of 15% to the whole body and a work disability of 78.5% to the whole body. Claimant is entitled to PPD benefits based on her work disability.

5. Claimant is not entitled to interest/penalties under K.S.A. 2011 Supp. 44-512b.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁴ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, it is the Board's decision that the Award of SALJ Mark Kolich dated September 5, 2013, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March, 2014.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Honorable Mark Kolich, Special Administrative Law Judge
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⁴ K.S.A. 2010 Supp. 44-555c(k).